

Board of Selectmen's meeting  
January 17, 2013

Present: First Selectman Gayle Weinstein; Selectman David Muller; Selectman Dennis Tracey; Town Administrator Tom Landry; Administrative Assistant Judy DeVito; Residents.

**This meeting was recorded and videotaped. Copies are available in the Selectmen's office. The meetings are available for viewing online via the Town's website.**

**Ms. Weinstein called the meeting to order at 7:30pm**

**Pledge of Allegiance-**

**Accept the resignation of Sheila Koehler from the Lachat Oversight Committee effective immediately.** Mr. Muller moved to accept the resignation of Sheila Koehler from the Lachat Oversight Committee effective immediately. Mr. Tracey seconded and the motion passed unanimously.

**Discussion/decision regarding amendments to the current firearms ordinance-**

Ms. Weinstein said the Weston Board of Selectmen has always been and will continue to be committed to the safety and security of our residents. The State of Connecticut mandates us to do so. Reviewing and making proposed changes to their current firearms ordinance that was created in 1990 is part of that commitment.

Ms. Weinstein said she was proud of our Republican Selectman Dennis Tracey who introduced the proposed changes. It takes a lot of courage to buck the national platform of your party but she knows that Dennis, she and David are committed to making decisions that are in the best interest of the community and not tied to a particular political agenda. How many more people have to be massacred in schools, shopping malls and movie theatres before those of us who are in a position to create laws actual act. Municipal leaders have an obligation to make sure that this conversation happens at a local level. She knows that the only way to affect change is to start at the grass roots level. She hopes that this is the year that our State and Federal elected officials take action and take action quickly.

She will make her decision regarding the changes to this ordinance the way she always does by listening to our residents and supporting what she thinks is legally, financially and ethically the right decision for the Town of Weston.

Mr. Muller said when we first discussed this a few weeks ago, that their conversation about the importance of local action would take us to the point where people around the country are paying attention to what we are doing. There are three questions that we need to focus on. 1. Is now the time for the topic of additional gun control measures to be addressed? 2. Do we as Selectmen have the ability to address this topic and 3. What are the right steps if any for the Town of Weston to take?

When he looks at statistics in 2011 there were 12,664 total murders in the United States of which 8,583 were by firearm. Of that total 6,220 were by handgun, 323 by rifle. When

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we add to the number the number of people that use a gun for suicide the number comes out to be 32 gun murders and nearly 90 gun deaths every day of the year. Eighty percent of gun deaths are with weapons that have been legally acquired but not necessarily used by the person who acquired them. Major changes in the way that society addresses important topic often begin in local communities just like this.

At our first meeting when the discussion of this topic started the three Selectmen agreed that the conversation must be started locally and the desire that the sentiment would bubble up to the State and National level. Things have happened quickly both in the State and National level.

He is concerned about the attempt by many of the people who decided to write to them and the organizations on whose behalf they were writing that continue to ascribe gun deaths to mental illness, drug abuse, the absences of god in schools, poor parenting and they never once acknowledged that the access to guns may be a factor in this tragic annual static.

The second question is whether we as Selectmen have the ability to address this topic. The answer is a resounding yes. Article 3 of the constitution establishes the Supreme Court as the ultimate legal authority in the United States and it has the final word on the interpretation of the constitution. The Supreme Court has interrupted the 2<sup>nd</sup> amendment in its Heller decision in 2008. The majority opinion written by justice Scalia struck down a ban on handguns kept in the home for self-defense. Even though he may not like Justice Scalia's decision, Heller is the law of the land and the Weston Board of Selectmen will undertake no activities regarding guns that conflict with Justice Scalia's ruling in Heller. Nothing the Board does should be interpreted to limit the right of citizens to own weapons for self-protection in their homes.

Justice Scalia states that the right to own guns is not absolute. His decision also contains a list of laws and regulation that would be unaffected. "Nothing in our opinion should be taken to cast out on long standing prohibitions on possession of firearms by felons and the mentally ill." Government buildings may also ban guns. The Supreme Court has no issue with "laws imposing conditions and qualifications on the commercial sale of arms." Scalia added that laws banning "dangerous and unusual weapons" are "another important limitation on right to keep and carry arms".

In looking at what we can do at the State level, he looks at Connecticut General Statutes section 7-148 "Scope of municipal powers" which gives us the authority to act in matters of public safety that reads "to define, prohibit and abate within the municipality all nuisances and causes thereof, and all things detrimental to the health, morals, safety, convenience and welfare of its inhabitation". In *United States vs. DeCastro* which was decided US Court of Appeals in June 2012, the court said heightened scrutiny is appropriate only as those firearms regulations that substantially burden the Second Amendment. Heightened scrutiny is triggered only by those restrictions that operate as substantial burden on the ability of law abiding citizens to possess and use a firearm for self-defense or for other lawful purpose. Law that regulates the availability of firearms is

not a substantial burden on the Second Amendment right to keep and bear arms if adequate alternatives remain for law abiding citizens to acquire a firearm for self-defense. Laws that have only a "de minimis" effect on the right to bear arms or do not "meaningfully affect individual self-defense do not impinge on the Second Amendment right and therefore do not warrant heightened scrutiny.

In November 2012 the case *Kachalsky vs. County of Westchester* Heller explains that the "core" protection of the Second amendment is the "right of law-abiding, responsible citizens to use arms in defense of hearth and home". We believe that applying less than strict scrutiny when the regulation does not burden the "core" protection of self-defense in the home makes eminent sense and is in line with the approach taken by our sister circuits". While the state's ability to regulate firearms as circumscribed in the home outside the home, "outside the home, firearm rights have always been more limited because public safety interest often outweigh individual interest in self-defense. There is a long standing tradition of states regulating firearm possession and use in public because of the dangers posed to public safety.

Mr. Muller said he received a postcard addressed to him and saying to call him and register a complaint. The ordinance that is here tonight dates back to 1990 and many of the issues raised in emails to the Selectmen about what they are attempting to put in place are not what they are trying to put in place. Our current Ordinance has been in existence for the last 22 years. What this board is trying to do is take a look at that ordinance to update it to 2013 and to deal with issues that they think are important.

Finally what are the right steps if any for the Town to take? One comment that President Obama made stuck a cord with him. He asked, "Are we prepared to say that such violence visited on our children year after year is somehow the price of our freedom?" He feels strongly that we do not need to choose between the protection of gun ownership and the prevention of gun violence. Those two can work symbiotically. He believes that local communities must face this issue head on. However we do need to recognize that the discussion is evolving extremely quickly at the State and National level. If the State is acting, if the Federal Government is acting, if neighboring States are acting, perhaps then some of the things that we have looked to do are best put on hold until we're sure that we are in agreement with what is being done at the National and State level.

Mr. Tracey said there are a number of misconceptions about what the Board is doing here and he wants to correct some of those impressions that may be wrong. We are here because as elected officials, we are charged by State law with protecting the health and safety of our residence. After the Newtown shooting the Board felt it was absolutely incumbent on them to ask the question, "are we doing everything we can.?" They passed a resolution shortly after the shooting. "The Town of Weston is committed to ensuring the security of its residents and children, preventing violence in any form and eradicating gun violence in our society. We hereby resolve to work with the Weston Board of Education and the Weston Police Department to take all appropriate steps to promote these important goals." That's not just gun bans, what we are talking about there is looking at the whole problem. We're talking about looking at mental health, looking at

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school security; we are talking about the broad range of issues that causes violence in our society.

Some people have asked do you have a gun problem in Weston. We have a gun problem in our society, and we don't have a gun problem particularly in Weston but we also aren't going to sit here and wait until there is a problem to think about ways that we can avoid them. Domestic violence is the most frequent crime in our area and in this Town and we have to think about how weapons can be used in domestic violence situations and try to prevent accidents from happening.

He wants to make absolutely clear that we respect the second amendment, that our country was founded on the premise that everyone is entitled to own firearms, and they are entitled to have it in for protection against and overarching government. That is what our country is based on, and we must respect that. Mr. Tracey is a lawyer, he absolutely respects the constitution, and spends his days protecting it and defending it and the second amendment will not be violated here. More importantly, we have many responsible lawful gun owners in our Town who we respect and love and it is very important to us to respect their dignity, not just their rights. Nothing we do is going to be without considering all those things.

We have a 1990 ordinance in this Town which has banned the use of assault weapons and machine guns in the Town of Weston. Nobody ever questioned that. It requires a permit to be issued by the Chief of Police for anyone who wants to use guns for residential target practice. And that has been on the books for 22 years. The question is, do we need to update that ordinance? We have talked about three things: We never talked about banning or eliminating weapons. We talked about whether we should add high capacity ammunition clips to the ban. Since that discussion started, there has been State and Federal initiatives that address that issue and he has issued a report to the Board of Selectmen recommending that we defer any consideration of that. Let's let the State and Federal government deal with that and not start in Weston because it is more effective to look at these issues on broader bases.

We talked about registering firearms in Town. He has concluded, and he believes that his colleges have concluded, that it is inappropriate and inadvisable given the fact that records of that kind are public and that they could potentially create a safety hazard and so they are not recommending that.

Most importantly for the Town of Weston, we are talking about safe storage requirements. All of the discussions with gun owners in Town tell him that we are already practicing safe storage in the Town of Weston but we still need to have a discussion about whether our ordinance adequately communicate the type of safe storage that we hope every gun owner will use to avoid domestic violence and accidents in the home. Mr. Tracey said that it was important to the Board that anyone with input please speak out.

At that point public comment pursued.

After all comments were heard the Selectmen closed the comment session and deliberated.

Ms. Weinstein said that there was a need to change the definitions as to what constitutes firearms, machine guns, rifles, shot guns, pistols and assault weapons. Mr. Tracey said there is no reason for us to have definitions that are different from the State definitions so he agrees that we should change those definitions to be consistent with the State.

The other definition in the 1990 ordinance that is out of date is the definition of self-defense which, as someone pointed out tonight, only applies to defending one self. Connecticut law is much broader than that and common sense is broader than that so we should change the definition of self-defense to be consistent with Connecticut State Law.

Mr. Muller said many people did say we don't have a gun problem in Weston. Aurora Colorado and Newtown didn't have a gun problem until it had a gun problem. His concern with that line of thinking is thank god we don't have a gun problem until the day we do and he wants to make sure as we go through our deliberations we go through it as though a problem could exist.

Ms. Weinstein said she would like to tackle the registration issue and Mr. Tracey had said that it should be removed from the initial draft consideration. At the Police Commission meeting, the Chief said that it would be an onerous task to try to register all of those guns. We heard tonight from people who owned guns that it would violate their right to privacy and we need to take that into consideration. Both Mr. Tracey and Mr. Muller agreed. After some discussion Mr. Tracey said that a registration requirement within Weston is inappropriate so the Board decided to pass on the gun registration.

Section 7. 8 – 48 a. Prohibition (a) No person shall possess or discharge any Assault Weapon, Automatic Weapon or any detachable magazine capable of storing more than ten (10) rounds of ammunition in the Town of Weston.

Mr. Tracey said any ordinance that bans the ownership or possession of a particular weapon does have serious constitutional issues because of the second amendment and also because it would potentially make unlawful the ownership of weapons that people already have in their possession. For those reasons, he would advocate not moving forward on that at this time, and seeing what happens to the proposals that are being made federally and on the State level, and then coming back to this issue later. If we do come back to it, we would make it very public and have full discussion. He thinks we should drop it now and come back to it if necessary.

Mr. Muller proposed that we table that component and specifically set a time that we would revisit if we have not seen any action taken at the State level. He is more concerned about what the State level.

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Section (b). Mr. Tracey said currently in our Statute is a requirement that anyone within the Town of Weston who wants to engage in residential target practice must obtain a permit from the Chief of Police. According to the Chief, that requirement has not been enforced in past years. He recommends that we leave that on the books for future enforcement. Ms. Weinstein said we will table this until we talk to the Chief of Police about it.

Section (c). We will look at cleaning up the language in this section.

Section 7. 8-51 Storage. Ms. Weinstein said that she still feels strongly about this section. She said the more we can do to be sure that guns are stored safely and away from children it will go a long way from a lot of the accidental deaths that we hear about.

Mr. Tracey said that people spoke today about the remedy should fit the event and some of the things that we have been discussing don't directly help avoid violence. He believes that the storage suggestion can make people safer within the Town of Weston. Based on reports from Newtown, it appears that failure to engage in safe storage practices was a major element enabling that boy to commit the crime. It also figures into domestic violence events. He agrees that real thought needs to be given to encouraging and requiring safe storage in our Town.

Mr. Muller said he agreed with the comments made, and the question we have to face is do we have the ability and is it advisable to extend that to all residents rather than just those that have children in the house. He said we are all in agreement that safe storage is crucial. His concern would be whether something that is totally locked up is accessible under the provisions of Heller and subsequent decisions. That bears a lot of thought and consideration from a legal perspective.

Section 7.8-52 the penalty amount will be changed to \$250.

Mr. Muller asked about taking a safety course. Ms. Weinstein said she would check to see if legally we can add that to the ordinance.

They will come back with a new draft at the next meeting and if they like the changes they will schedule a public hearing.

## **Open Items**

### **Updates**

**Grants- Gayle Weinstein-** No new news

**Personnel Handbook-** Tabled to the next meeting

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**Any other business to come properly before the meeting.** none

**Discussion/approval of the Board of Selectmen's meeting minutes of December 20, 2012, January 3, 2013 and the Emergency Board of Selectmen's meeting of January 12, 2013-** Mr. Tracey moved to approve the Board of Selectmen's meeting minutes of December 20, 2012, January 3, 2013 and the Emergency Board of Selectmen's meeting of January 12, 2013. Mr. Muller seconded and the motion passed unanimously.

At 9:30 Mr. Muller moved that they enter into executive session. Mr. Tracey seconded and the motion passed unanimously.

#### **Executive Session- Potential Land Acquisition**

ATTENDANCE: The meeting was convened at 9:36 pm in the Middle School Auditorium by Chairman Weinstein, with Selectmen Muller and Tracey present. Also in attendance was Town Administrator Landry.

DISCUSSION: The purpose of the meeting was to discuss a potential real property acquisition.  
No votes were taken.

ADJOURN EXECUTIVE SESSION: At 10:12 pm, a motion (David Muller, Dennis Tracey second) to adjourn executive session and resume in open session passed unanimously.

ADJOURN: At 10:13 pm, a motion to adjourn (Dennis Tracey, David Muller second) passed by unanimous vote.

Respectfully submitted

Judy M. DeVito  
Administrative Assistant  
Approved 02/07/13